

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
GREGORY DESTINE a/k/a/ Mrs. GoGo Destine, :

Plaintiff, : 20-CV-0082 (LTS) (OTW)
-against- : **ORDER**
ROMEO JOSEPH, :
Defendant. :
-----x

ONA T. WANG, United States Magistrate Judge:

On May 5, 2022, I issued a Report and Recommendation to the Honorable Laura T. Swain that the action be **DISMISSED** for failure to prosecute. (ECF 136). Judge Swain adopted the Report and Recommendation and accordingly dismissed the matter without prejudice on June 14, 2022. (ECF 137). *Pro se* Plaintiff has recently mailed multiple letters unrelated to this case directly to chambers with the return address located at Gouverneur Correctional Facility. (*See, e.g.*, ECF 139). *Pro se* Plaintiff is reminded that documents should be submitted to the *Pro Se* Unit in the Southern District of New York, not to the chambers of the judges in this case.

Additionally, because previous mail to the *pro se* Plaintiff was returned as undeliverable, the Court will attach the previous Report and Recommendation and adoption of the Report and Recommendation by Judge Swain. (ECF 136, 137).

The Clerk of Court is respectfully directed to serve a copy of this Order on the *pro se* Plaintiff at the now updated address on the docket.

Respectfully submitted,

Dated: January 18, 2023
New York, New York

s/ Ona T. Wang
Ona T. Wang
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
GREGORY DESTINE a/k/a/ Mrs. GoGo Destine, :

Plaintiff,

: 20-CV-0082 (LTS) (OTW)

-against-

REPORT & RECOMMENDATION

ROMEO JOSEPH,

Defendant.

-----x
ONA T. WANG, United States Magistrate Judge:

To the Honorable LAURA T. SWAIN, United States District Judge:

On December 15, 2021, the Court held a status conference at which Plaintiff represented that discovery had been delayed in this case because they had not received necessary discovery from Defendants. (ECF 125). The next day, the Court memorialized a discovery briefing schedule and reiterated explicit instructions for defense counsel to track the mailings to *pro se* Plaintiff due to Plaintiff's allegations. (ECF 130). Plaintiff was directed to file a request for discovery relief by January 21, 2022 but did not. (ECF 124). In a February 18, 2022 status letter, defense counsel admitted that they did not bother to confirm that Plaintiff received their mailings—as ordered—until two months after being directed to do so. (ECF 128 at 1). Upon review, defense counsel learned that the mail had been “returned” (not rejected or refused) but did not investigate whether the return was because of a failing on their part. (ECF 128 at 1). The Court again ordered Defendants to investigate what happened to their mailings. (ECF 130). On March 29, 2022, defense counsel updated the Court that upon investigation, it is “evident” that “Plaintiff has simply been refusing our office’s mailings.” (ECF 131 at 2).

On April 5, 2022, I ordered Plaintiff to show cause by April 30, 2022 why this action should not be dismissed for failure to prosecute. (ECF 133). Defense counsel was directed to mail a copy of this Order to Plaintiff and track whether the mail was delivered, received, refused, or returned. (ECF 133). Defendant did so. (ECF 134, 135).

Plaintiff has the ultimate obligation of moving the case to trial, and “[d]ismissal is warranted where there is a lack of due diligence in the prosecution of the lawsuit by [the] plaintiff.” *West v. City of New York*, 130 F.R.D. 522, 524 (S.D.N.Y. 1990). This obligation applies equally to plaintiffs proceeding on a *pro se* basis. *See, e.g., Smith v. Griffen*, No. 15 Civ. 622, 2017 WL 4466453, at *2–3 (S.D.N.Y. Aug. 31, 2017) (“[C]ourts in in this district routinely dismiss *pro se* . . . actions for failure to prosecute where, as here, [the plaintiff] fails to participate in the action or meet his obligation to provide the Court and [the defendants] with updated contact information[.]”), *report and recommendation adopted*, No. 15 Civ. 622, 2017 WL 4477062 (S.D.N.Y. Oct. 5, 2017).

Here, Plaintiff has failed to move the case forward by failing to meet judicial deadlines and rejecting mail necessary to litigate this case. Accordingly, I recommend that the action be **DISMISSED** for failure to prosecute.

In accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen (14) days (including weekends and holidays) from receipt of this Report to file written objections. *See also* Fed. R. Civ. P. 6. A party may respond to any objections within fourteen (14) days after being served. Such objections, and any responses to objections, shall be addressed to the Honorable Laura T. Swain, United States District Judge. Any requests for an extension of time for filing objections must be directed to Judge Swain.

FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER

OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. See *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1054 (2d Cir. 1993); *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *Wesolek v. Canadair Ltd.*, 838 F.2d 55, 58 (2d Cir. 1988); *McCarthy v. Manson*, 714 F.2d 234, 237–38 (2d Cir. 1983).

The Clerk of Court is respectfully directed to serve a copy of this Order on the *pro se* Plaintiff at the address on the docket.

Respectfully submitted,

Dated: May 5, 2022
New York, New York

s/ Ona T. Wang

Ona T. Wang
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

GREGORY DESTINE, a/k/a MRS. GOGO
DESTINE,

Plaintiff,

-v-

No. 20-CV-00082-LTS-OTW

ROMEO JOSEPH, shield no. 501296,

Defendant.

-----x

ORDER ADOPTING REPORT & RECOMMENDATION

The Court has reviewed Magistrate Judge Wang’s May 5, 2022, Report and Recommendation (the “Report”) (docket entry no. 136) which recommends that the Court dismiss this case for failure to prosecute. No objections to the Report have been received.

In reviewing a report and recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C.A. § 636(b)(1)(C) (Westlaw Pub. L. 117-139). Where, as here, “no objections are filed to a magistrate judge’s report and recommendation, a district court need only satisfy itself that there is no ‘clear error on the face of the record’ in order to accept the recommendation.” Alpha Cap. Anstalt v. Shiftpixy, Inc., 432 F. Supp. 3d 326, 330 (S.D.N.Y. 2020) (internal quotation and citation omitted).

The Court has reviewed carefully Magistrate Judge Wang’s well-reasoned Report and Recommendation, and finds no clear error. The Court therefore adopts the Report in its entirety for the reasons stated therein. Accordingly, this matter is dismissed without prejudice

for failure to prosecute. The Clerk of Court is respectfully requested to enter judgment accordingly.

Chambers will mail a copy of this Order to the pro se Plaintiff.

SO ORDERED.

Dated: New York, New York
June 14, 2022

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge

Copies mailed to:¹

Gregory Destine
DIN 20R0172
Attica Correctional Facility
639 Exchange St
Attica, NY 14011-0149

Gregory Destine
DIN 20R0172
Orleans Correctional Facility
3531 Gaines Basin Road
Albion, NY 14411-9199

Gregory Destine
DIN 20R0172
Wyoming Correctional Facility
3203 Dunbar Road
Attica, NY 14011-0501

¹ Plaintiff has not updated the Court with her current mailing address, or otherwise contacted the Court, since late 2021. It appears, however, that she is currently incarcerated at the Attica Correctional Facility in Attica, New York. See New York State Department of Corrections and Community Supervision, Inmate Lookup, <http://nysdocslookup.doccs.ny.gov/> (last visited June 14, 2022). The Court mails this Order to Plaintiff at (1) Attica Correctional Facility, (2) Orleans Correctional Facility, the facility listed on this action's docket sheet, and (3) Wyoming Correctional Facility, Plaintiff's last known facility before Attica. (See docket entry no. 131-1 ¶ 5.)